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Harvard Law Record

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Hearsay

Arthur W. Walenta, Jr., 3L of San Anselmo, Calif., as a peace-loving man, has naturally been distressed by the press reports of disorder in Cuba. As a young lawyer, his confidence in the law induced him to seek model legislation which might be used to restore order in our neighboring island.

He uncovered an item in 15 *The Green Bag* 394 (1903) which may have some remote relevance to the Cuban problem.

"The following act was passed at the last session of the Kansas legislature. Sessions' Acts, 1903, p. 113.

"Be it enacted by the Legislature of the State of Kansas;

"Sec 1. That the term 'automobile' and 'motor vehicle' as used in this Act shall be construed to include all types and grades of motor vehicles propelled by electricity, steam, gasoline, or other source of energy, commonly known as automobiles, motor vehicles, or horseless carriages, using the public highways, and not running on rails or tracks. Nothing in this section shall be construed as in any way preventing, obstructing, impeding, embarrassing, or in any manner or form infringing upon the prerogative of any political chauffeur to run an automobilious band wagon at any rate he sees fit, compatible with the safety of the occupants thereof; provided, however, that no less than ten nor more than twenty ropes be allowed at all times to trail behind this vehicle when in motion, in order to permit those who have been so fortunate as to escape with their political lives an opportunity to be dragged to death; and provided, further, that whenever a mangled and bleeding political corpse implores for mercy, the driver of the vehicle shall, in accordance with the provisions of this bill, 'throw out the life-line.'

CALENDAR

Notices for publication in the Calendar should be in the RECORD offices not later than noon the Friday before the date of publication.

Thursday, February 11

The LAW SCHOOL YOUNG REPUBLICANS AND OTHER REPUBLICAN GROUPS will present the Honorable Thruston B. Morton, Chairman of the Republican National Committee and Senator from Kentucky, in the Lowell House Junior Common Room at 3 p. m.

The INTERNATIONAL LAW CLUB will hold a discussion group meeting in the Wheeler Room, Holmes Hall at 4 p. m. The speaker will be Mr. George M. Abi-Saab of the United Arab Republic; the topic will be "The Concepts of Purpose and Cause and the Technique of Analogy in Moslem Jurisprudence."

Friday, February 12

There will be a DORM COUNCIL MIXER from 8 to 12 p. m. in Harkness Commons. Young ladies from throughout the area will attend.

Monday, February 15

This will be the deadline for entries in the WILLISTON COMPETITION, QUALIFYING ROUND.

First year students may pick up their papers covering Part I of the PRACTICE EXAMINATION.

Tuesday, February 16

All first year students should attend a meeting in the Ames Courtroom at 2 p. m., at which time answers to the questions on Part I of the PRACTICE EXAM will be discussed.

Wednesday, February 17

The HARVARD LAW WIVES will meet in the Harkness Meeting Room at 8 p. m. for bridge.

The INTER-AMERICAN LAW STUDENTS ASSOCIATION will hold an organizational meeting at 1:30 p. m. in the Harkness Meeting Room. Dean Barnes will speak. All law students are invited to attend.

Continued on page 16

Ames Quarterfinals Underway

It's that time of year again. For the honored few from second year who made it through the Qualifying Rounds, the Quarterfinals loom large and near. All the facts have been distributed, according to Mr. Daniel G. Partan, Faculty Assistant for the Ames Competition.

The eight clubs participating will have varied and interesting legal questions to tussle with in hoping to gain the big prize in the spring of 1961.

The first case will be argued March 15 by the Langdell Club for the appellant and the Gower-Herwitz Club for the appellee. *Siamese Block Company v. Dur-All Company* is a private anti-trust action seeking treble damages for injuries allegedly resulting from price discriminations in the cinder concrete building block industry. The issues deal with the meaning of the term "discrimination" and the scope of the "meeting of competition" defense.

On March 17, the Dawson Club for the appellant and the Gardner Club for the appellee will lock horns in the final appeal of *Gomillion v. Lightfoot*, 270 F.2d 594 (5th Cir. 1959). This is an action for a declaratory judgment that an Alabama statute reducing the boundaries of the City of Tuskegee is invalid under the Fourteenth and the Fifteenth Amendments.

The third round takes place March 21. The case is *Crown Kosher Super Market of Mass. v. Gallagher*, 176 F.Supp.466 (D. Mass. 1959). The defendant is asking for a Supreme Court review on appeal from a declaratory judgment that certain provisions of the Massachusetts Lord's Day statute are unconstitutional as applied to a kosher supermarket, its Orthodox Jewish customers and the rabbis whose duty it is to inspect the kosher markets. The Bruce Club for the appellant and the Jaffee Club for the appellee will handle this controversy.

The final round involves a torts case. *Spaulding v. Ames Memorial Hospital* is a suit against a hospital for personal injuries resulting from the negligence of a hospital employee. The issues concern the validity and scope of the charitable immunity doctrine and the extent to which damages may be recovered for cancerophobia induced by the advice of a physician to whom the plaintiff had gone for the treatment of his injuries. The Magruder Club for the appellant and the Kaplan Club for the appellee will argue this case.

The procedure for the submission of briefs will be new this spring. A reply brief system is being tried to insure the thoroughness of the arguments.

The four winning teams will go on to the Semifinals next autumn. From there, the victors move to the spring Finals at which a United States Supreme Court Justice will preside.

Printed briefs and records will be available a few days before each argument.

— Barnitt

Growth of a Company

Born into poverty in a South Boston barn in 1923, Textron, Inc. has now grown to be the proud parent of twenty adopted businesses, Chairman Royal Little told an enthusiastic Bull and Bear audience last Friday afternoon.

Tracing the development of the Company, Chairman Little pointed out that its childhood Profit and Loss statements faithfully mirrored the peaks and valleys of the U.S. economic cycle. Since this is characteristic of the textile industry generally, in 1953 the Company turned to parenthood for salvation. By adopting totally unrelated businesses, the Company was able to fill in those disastrous valleys and to concentrate on establishing

ever-higher peaks on its Profit and Loss chart.

Textron attained its maturity through an intricate "merger by judo" with the American Woolen Company in 1954. This adoption involved a splendid court battle, featuring private detectives, a black bag filled with proxies forged by a Trenton, N. J. coffin-maker, and a shareholders' meeting which was adjourned 13 times for want of a quorum.

As is characteristic of any family, the children occasionally caused this parent much financial heartache by failing to fulfill those fond parental hopes of a 25 per cent return on the original investment. However, overall, the parent's policy of adopting only children who exhibit a good record of self-control and of allowing them to continue to live their own lives, with the stipulation that they write home at frequent intervals to report their current progress, has proved very successful.

The primary disadvantages of this way of life, Chairman Little observed, result from the Internal Revenue's practice of requiring the parent to keep its tax returns open for a period up to ten years so that it may carefully audit each of the Company's adoptions. Another disadvantage is the reluctance of long-term investors to contribute to the parent's support. This latter fact is due largely to the size and diversity of Textron's family. The investor tends to be skeptical of the parent's ability to keep all these children in line, each contributing its share to the family larder. Chairman Little scoffs at this objection, however, and optimistically asserts that Textron's children have at last reached the productive years, with the result that the parent shall never know want again.

Patent Law Club Organizes, Hears Speaker

Time was when the title to inventions perfected under Government research and development contracts vested in the contractor. That did not last, however, according to Mr. Elmer Gorn, patent counsel for Raytheon, Inc., who spoke before the organizational meeting of the Patent Law Club last week.

The original idea was to leave commercial adaptation of such developments to private

business. The Government took only a royalty-free, non-exclusive license for production. Later, due to the inequity of having title to the patents vest in a handful of favored contractors and also because of the nature of the vital inventions, the Atomic Energy Act of 1946, as amended in 1954, introduced a new concept. The Government was to take title, subject to a reversion in the contractor at the discretion of the A.E.C.

This idea spread. The same system was worked out in the Space Act of 1958 with the N.A.S.A. having all the discretion. The Space Act deals with contracts involving work on instruments for space and aeronautical activity encompassing flights by aircraft and missiles within and without the earth's atmosphere. The electronics industry receives 90 per cent of its support from contracts for research and development in these areas. However, the chance of N.A.S.A. passing title on to the industry is hampered by provisions of the Act and the structure of the N.A.S.A. itself.

Even with this new method of taking title, Mr. Gorn explained that this system is not uniform. The Department of Defense still works under the old system, taking only a license. If N.A.S.A. is to succeed and prevent the electronics industries from shifting their business to the Department of Defense, the Space Act will have to be amended to provide title for the private industries and a license for the government, unless the health, safety, and welfare of the nation requires otherwise.

Afterwards, Mr. Gorn was questioned upon the field of patent law. He commented that a background in physics or chemistry would be helpful to the aspiring patent lawyer, but the bright young man who is quick to grasp facts and who perceives how a patent could be used effectively would be preferable to the mediocre lawyer with a good science background.

He assured the group that the Boston Patent Law Association would be happy to cooperate with the Patent Law Club in securing and perhaps establishing a placement service for summer and permanent employment for prospective attorneys.

Future meetings of the club are being planned. Students are invited to watch for notices.

— Drachman

Chayes Urges Williston Participation

To The Second Year Class:

As chairman (and sole member) of the faculty committee on the Board of Student Advisers, I am puzzled by the relatively small response among the student body to the Williston Competition in legal draftsmanship.

This summer a good many of you will follow in the footsteps of your predecessors at the Law School by spending two or three months in law offices on Wall Street, Federal Street, Market Street or Main Street, U.S.A. You will be anxious to contrast the atmosphere here with the practice of law which

Second year students are reminded that the deadline for team entries in the Qualifying Round of the Williston Competition is Monday, February 15. Team entries may be submitted at the office of the Board of Student Advisers in Austin Hall. The Board will be happy to assist students in completing four-man teams.

The Qualifying Round will start on February 23 and run until March 8.

you have been told is "different." To some extent it is different. The bulk of your work will be devoted to something that to this point has been little emphasized in the classroom or the case books. You will be working for partners and through them for clients whose primary objective will be to avoid the frustration, time and expense of litigation which have gone into every case you have read for class or looked up in the reporters. Your success as a summer clerk and as a lawyer and your satisfaction with practice will in large part depend upon the skill you develop in avoiding these problems.

In terms of correlation between school and this aspect of practice, the Williston Competition may well be the most realistic feature of the Harvard Law School. When the Competition begins you will be handed an assignment from the senior partner who has talked with the client. In the first rounds of the Competition this will be a relatively simple problem; yet you will be surprised at how

it taxes your ingenuity. Your job is to provide the best possible answer for the client. Complexity arises because of the great number of possible solutions to his problem.

In my talks with second and third year students, I find that the complaint most often made about the Law School curriculum is that it does not provide enough experience in legal writing. Whatever may be the merits of including some such opportunity in the formal work of the school, anyone who feels the need for sharpening his writing and drafting skills will find that Williston pays dividends far in excess of its costs.

The demands of the Competition are not onerous, even by the standards of the Ames Competition, and yet I think that each of you who participates will gain that first spark of assurance in drafting which you have already gotten in litigation from arguing Ames cases. I sincerely hope that each of you who is eligible will take advantage of the opportunity afforded by the Williston Competition.

— Professor Abram Chayes

Israeli Attorney General Appears Before Two Groups

Asserting that "problems of legislation in a new country are the same everywhere," Attorney General Chaim Cohn of Israel last week appeared before the International Law Club, speaking on the topic, "Problems of Creating Law in a New Country."

The Attorney General, in his discussion, considered the problems confronting all newly independent States in creating new law, using the Israeli experience as his basis for analysis. The task of ridding the new State of colonial law, he explained, cannot be done overnight. Moreover, the time necessary to accomplish the result varies. For example, he said: "In Israel each legislator takes each word separately." There is a general healthy suspicion that the executive wants to put legislation through parliament in favor of the administration. This suspicion, Mr. Cohn informed the club, impedes the rate of progress considerably.

As a sidelight, the speaker cited the problem of creating appropriate legal terminology in the new official language of a country. This creation of terminology in Israel was described as being "very fascinating."

Addressing himself to the political aspects of the problem of creating new law, Mr. Cohn pointed out that, although the primary purpose of legislation is to secure the paramount rule of law, in a newly created State the rule of law may be temporarily secondary to the more immediate concern of survival. Under such circumstances it may be difficult to persuade politicians that there must be long term planning. In such a situation, "good judges may in some instances take the place of good laws."

Mr. Cohn viewed the problem of creating new law as essentially one of choice. He suggested that a wise method is "to see how other nations do it." But, in doing this, he warned, "you must realize that you cannot choose from unrelated systems and gain consistent solutions to your own problems." In Israel, in making a choice of precedents, the Attorney General noted that they were blessed in having the old Jewish law as a guide.

During the question and answer period which followed, Mr. Cohn remarked he did not think that rabbinical control over marriage and divorce would be a permanent feature of Israeli law.

At Coffee Hour

While he was at the Law School, Attorney General of Israel Chaim Cohn also spoke on the problems of internal security in the State of Israel at a Harvard Law School Coffee Hour. Immediately following his address, Mr. Cohn answered a wide variety of ques-

tions from the audience, ranging from inquiries over the jurisdiction of religious courts in Israel to questions about the reopening of the Suez Canal to Israeli shipping.

In his speech, Mr. Cohn described the evolution of the Israeli legal system from the initial emergency regulations inherited from the British in 1948, to the present system, which is based on the common law. He compared favorably the constitutional safeguards to civil liberties in his own country to those in England, neither country having a written constitution. He described the situation as "better than many, many countries that have written constitutions."

Mr. Cohn briefly outlined the structure of his country's court system. At the lowest level, he said, are thirteen Magistrate's Courts, having original jurisdiction over most matters. At the next level are five District Courts, having appellate jurisdiction. At the top of the pyramid is the Supreme Court, which has appellate jurisdiction in most cases, but original jurisdiction in cases involving requests for writs against the government. Also present in Israel are religious courts of various denominations, but these courts have jurisdiction only in questions of marriage and divorce.

In response to a question about submitting the dispute over Israeli shipping in the Suez Canal to the International Court of Justice, Mr. Cohn said that, to his knowledge, the idea is not being contemplated. He expressed the hope that the matter could be settled by the United Nations.

Deceased

James L. Kraybill, 1L, of Manheim, Pennsylvania, died at his home on December 30, 1959. Sympathy is extended to his family.

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Johnny Took the Practice Exam

The alarm clock awakened Johnny from a deep, pleasant sleep. He sat up and peered out the window, consciousness slowly returning to his keen and powerful mind.

Johnny was a first year student at Harvard Law School. For five months, he had attended classes, read cases and revelled in a joyous new world of legal learning. He had done his work diligently and this was to be the day of his reward. The date was Saturday, February 6, 1960. It was the day of the long awaited practice examination.

Half an hour later, Johnny was waiting in line for breakfast at Harkness Commons. The atmosphere was pervaded by a happy wholesome tension as the first year students discussed the forthcoming examination. The bleak rainy weather did not dampen their young spirits as they watched the motherly women behind the counters piling heaps of steaming delicacies on attractive trays.

Soon Johnny was seated at a table with three other boys. They said very little at breakfast that morning. All were poring over handwritten outlines of courses. All, that is, except the little fellow with the frightened face. He spent his breakfast thumbing frantically through the Federal Rules of Civil Procedure, mumbling to himself as he turned the pages. So excited was everybody that morning, that not one person remarked about the quality of the coffee, which had been specially aged in the urns at Harkness Commons.

The Happy Hour

The time passed quickly, until, at 2 p. m., the happy hour had arrived. The exam was to be given in a classroom. As Johnny walked nervously into the room, he noted that the seats were placed very far apart. Apparently the group of potential senators, governors and chief justices was not to be unduly tempted in a practice examination.

Johnny took a seat near the front of the room. On the desk in front of him, he found a blank answer book and a deceptively simple looking attendance card. He printed his name carefully on the attendance card, then he came to a line marked, "Subject." His keen

lawyer-like mind immediately told him that these cards were merely a bureaucratic anachronism, but he hesitated to leave the line blank. He looked up at the wall in the front of the room. Justice Brandeis looked back at him. Suddenly a surge of confidence flowed back to Johnny and he wrote, "Practice Exam." Johnny was going to be a lawyer after all.

Soon the proctors were passing around the question sheets. Johnny read the first question carefully. It was a tort problem. The last line of the question said, "What torts? Explain." He noted at least five possible torts. In the 20 minutes remaining, he discussed each one thoroughly, then went on to the next question.

An Expert Was He

It was a problem in Civil Procedure. Johnny was proud of his knowledge of procedure. He enjoyed the course and was under the impression that he understood it. The question, though, did not appear to have anything to do with anything he had learned. He had a sneaking suspicion that the doctrine of *Erie v. Tompkins* applied somehow, but he did not quite see how. He was reassured, however, by the language of the question, which told him, "The case is referred to you as an expert in federal procedure."

On and on went the examination, touching blithely on Criminal Law and Contracts. Johnny was enjoying the whole experience. He was learning the difficulties involved in formulating lucid answers to questions on law examinations. He looked forward to the helpful criticism which he knew his teaching fellow would be able to give him in regard to his answer.

Then he came to the Property question. This was the question for which he had been waiting. Weary though he was, he had been saving a final reserve of strength for this most challenging of disciplines. He had anticipated entering into an erudite discussion of 15th century land law, but when he saw the question his complexion paled. This question called for nothing more than any of the questions in his casebook. It all turned on

remembering the names of two doctrines briefly mentioned in the book and in class. If he could fit the name of the case to the right doctrine, he would have a perfect answer. If he could not, he would fail. There was to be no discussion, no analysis, no opportunity to use all the knowledge he had so laboriously acquired. It was just a simple right or wrong answer. Johnny wept, he pulled his hair, he gnashed his teeth. He wrote down the three words.

Johnny deposited his answer book on a chair marked with the name of his teaching fellow. Then he walked out of the room, his head bowed. The law seemed a creature of caprice.

The next morning, however, he was hard at work again. The human spirit is remarkably resilient, and no single question could extinguish a spark which had taken five months to kindle.

— Freilicher

Pleas for Algerian Self-rule

"Other colonies get independence. Why not Algeria?" demanded Algerian rebel envoy Abdel Kader Chanderli at the Law School Forum last Saturday evening. He defiantly proclaimed the "unshakeable determination" of the Front of National Liberation to obtain undiluted self-rule for Algerians. He explained that, since the Algerian rebellion began in 1954, it has been guided by the F. L. N., a fully-formed shadow government now operating from Tunis.

While calling the rebellion the "dirtiest of wars," Mr. Chanderli said it is necessary because "diehard French colonialists" have shown by their recent insurrection an unyielding opposition to "any form of self-determination for Algerians." French President DeGaulle's quelling of the uprising was a "great act of statesmanship," according to Mr. Chanderli. "We are glad DeGaulle is in power," Mr. Chanderli said. "After seven governments and two Republics since 1954, he is the first French leader able to settle with us."

President DeGaulle's proposals of last November were regarded by Mr. Chanderli as a starting point for negotiation. Intergration with France, or loose association, or complete independence for Algeria were the alternatives President DeGaulle offered at that time. Expressing eagerness to end "this bloodiest of colonial wars," Mr. Chanderli said rebel leaders would confer secretly with the French President "if public meetings would offend his sense of *grandeur*."

Panelist Rupert Emerson, a Harvard Professor of Government, asked whether the meetings would evolve a federated form of

government for Algeria. Mr. Chanderli rejected federation as a "Balkanization." In contrast, he forecasted unification of all Algeria with neighboring Tunisia and Morocco. At this, Panelist Mark Karp, a Boston University Professor of African Studies, ventured that unification was unlikely because the three countries compete economically.

Although Harvard Law Professor Derek Bok, the moderator, praised Mr. Chanderli for his "calm, forthright answers," the rebel envoy burst out angrily during the question period when asked by a Frenchman about F. L. N. terrorism. "I didn't come here to exchange corpses with the gentleman," Mr. Chanderli exclaimed. He referred to atrocities attributed to the French Army. Admitting that "nobody can justify terrorism on moral grounds," Mr. Chanderli asserted there is sometimes no other way to gain independence.

Answering other questions, Mr. Chanderli made these points: "After France, the worst adversary of the F. L. N. is Israel"; the United States should "at least say it's sorry" that French kill Algerians with American-made N.A.T.O. weapons; the F.L.N. is grateful to that great leader," President Nasser of Egypt, who was "the first outsider to help us."

Mr. Chanderli expressed hope for an early end to the war so that Frenchmen and Algerians can live "a common life through common sense." He promised protection of French minority rights under a government run by the F.L.N. "We will rule better than the French have ruled us," he predicted.

— Seith

FEATURES SECTION

The Item Veto: A Needed Reform

By SENATOR KENNETH B. KEATING

For nearly a century the pros and cons of granting the President of the United States the authority to veto specific items in appropriation bills approved by Congress have been considered. While there have been sporadic bursts of interest in this subject, there has never been the consistent and sustained backing for this proposal that its potential importance justifies.

I am hopeful the present national concern about our fiscal stability, combined with the successful experience of our States in utilizing this valuable tool, will soon lead to affirmative action by Congress and the American people on the item veto. In my opinion, no step is longer overdue, no reform could reap greater benefits for individual taxpayers, and no single change in our governmental processes could save more money more wisely.

Article 1, Section 7, of the Constitution provides that "every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it. . ."

This veto power of the President, as it was written into the Constitution and as he must exercise it today, places a serious and unnecessary handicap on the Chief Executive. It is an "all or nothing at all" decision that confronts him each time a bill appears on his desk.

With regard to appropriation measures, this situation is especially unfortunate, and

it is only in connection with money bills that the item veto has been seriously considered. It is not at all unusual for an appropriation bill to contain many separate items listing the goods or services or functions of the Government along with their costs. Yet the President, in spite of his experience and knowledge of the agencies which will receive



Senator Keating

The Honorable Kenneth B. Keating received his LL.B. from the Harvard Law School in 1923. Since that time he has been in the practice of law in Rochester, N. Y. During World War II, he rose from Major to Brigadier General in the Army, serving in both the European and Asian theatres. He was a member of the House of Representatives for the 80th through 83rd and the 85th Congresses. In 1958 he was elected to the United States Senate as a Republican from New York. He presently serves in that capacity.

and spend this money, and his overall budgetary responsibilities, is given no opportunity to exercise discretion on a selective basis.

At a time when the budget of the United States, even after it has been carefully prepared with the utmost savings in mind, is bound to be enormous, this situation is difficult to understand or justify. The President must accept the wasteful and extravagant items along with the useful and necessary ones, or he gets nothing by vetoing the entire bill.

The item veto, therefore, is not just some abstruse or trifling governmental device of interest only to political scientists and constitutional lawyers. It should be the concern of every American citizen, who has a right to expect of his Government nothing less than the most efficient use of every dollar he contributes in taxes.

Adoption of the item veto by the Federal Government would not mean the introduction of some new and untried process into the Federal Government processes. On the contrary, the long-time use of this power in the American States constitutes one of the most persuasive arguments for its application at the national level.

The item veto first appeared in America during the Civil War in the Constitution of the Confederate States. Its record of adoption by the States following this conflict is most impressive. As new States entered the Union, and as older ones revised their constitutions, the item veto for the Governor became an established feature. With the admission of our newest States, Alaska and Hawaii, both of which provide for the item veto, the number of States with this provision now totals 42.

Tribute

No State which has granted its Governor this power has ever subsequently withdrawn it. This is an impressive tribute to its practical value and a striking refutation to the arguments of those who fear its abuse.

The use of the item veto and the strong endorsement it has been given by many Governors constitute the most eloquent testimony to its real worth. Data presented at hearings before the House Judiciary Committee in 1957 on the item veto fully support this statement. For example, in Pennsylvania,

where records have been kept with some care, appropriations were reduced by almost \$166 million through item vetoes between 1931 and 1957. Another \$133 million was cut out through vetoes of entire bills. The fact that the larger amount was removed through the selective type of veto is an interesting commentary on its usefulness.

These figures do not, of course, prove that the Governor was always right and the legislature always wrong. What they do show is the effect of having a second look, a second type of expertness, backed up with the power to act, at work in the appropriations process. They show the positive effects of vigorous application of this power.

As might be expected, the item veto has drawn much enthusiastic support from the Governors themselves. Former Governor Driscoll of New Jersey wrote: "Although the . . . item veto . . . will be sparingly used, the Governor attaches great significance to it." Former Governor of Illinois, Frank Lowden said: ". . . It has been helpful in keeping expenditures down." Former Governor Burnquist of Minnesota called the item veto "a very wise provision." The former Governors of Iowa, Indiana, Nevada, and North Carolina, states not conferring the right to veto items, expressed regret that this power was denied them. In the course of Congressional hearings in 1954, every single Governor who responded answered "yes" to the question: "In your opinion, has the item veto been a desirable feature of your State government?"

In a statement prepared for the 1957 hearings, Professor Frank W. Prescott, who has written extensively on the item veto, concluded: "Upon the basis of State experience and in some of the larger cities which have the item veto, the writer would endorse the

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item veto in principle for the President of the United States."

Many other distinguished political scientists share these views. One of the greatest of them, Lord Bryce, in his classic study, *The American Commonwealth*, wrote: "Such an amendment [the item veto] is desired by enlightened men. . . . Small as the change seems, its adoption would . . . save the nation millions of dollars a year, by diminishing wasteful expenditure on local purposes."

More recently, Sydney Hyman has written in his volume, *The American President*, that the item veto "would enable the President to pinpoint the pernicious details of legislation and appropriations, and veto them while he signed what remained. At present he has to throw the baby out with the bath water, or drink the bath water in order to embrace the baby."

President Compelled

In his recent book, *The American Presidency*, Professor Clinton Rossiter wrote:

"There is one final defect in the relations of President and Congress of which we should take careful note. . . I refer to his lack of any power to veto separate items in the over-stuffed appropriations bills presented for his approval. The President often feels compelled to sign bills that are full of dubious grants and subsidies rather than risk a breakdown in the work of whole departments."

Opponents of the item veto at the Federal level have expressed their fear that it would give the President too much power — power gained at the expense of Congress. As a general principle, I am in sympathy with the belief that we must zealously guard legislative responsibilities and prerogatives.

In the case of the item veto, however, I do not believe this to be a compelling argument. In the first place, both the beginning and the final responsibility for appropriations would continue to remain right where the Constitution placed them — with Congress. The custom would continue of initiating spending bills in the House Appropriations Committee; and the power of Congress to override an item veto, as well as the veto of an entire bill, would, of course, be complete and final.

It has also been contended that the item veto would weaken Congressional responsi-

bility for appropriations. This position can hardly be maintained. It is true that the President's role in the appropriations process would be enlarged, but this would be desirable since practically all Federal money is spent by the executive agencies which are responsible to him and for which he is responsible. But, as I have already indicated, ultimate authority at both the start and the finish with regard to these appropriations would still be with Congress. Any loss of responsibility by Congress in this matter would, therefore, be the result of a forfeiture by Congress itself rather than a forced deprivation.

The idea of the item veto has been attacked on the grounds that it would upset the system of checks and balances and weaken the doctrine of the separation of powers. There is little reason in theory to worry about this, and the extensive experience in the States with the item veto helps refute this charge. The fundamental authority and responsibility of both the President and Congress would remain unchanged. The President surely would find his hand strengthened with respect to appropriations, but not more than is necessary to execute properly the duties placed upon him by the Constitution.

The advantages of the item veto are obvious and compelling. It would reduce public expenditures substantially by making possible the reduction or elimination of many unnecessary "pork barrel" appropriations. The item veto could snip out the verbiage without rejecting the rest of the bill.

Riders Eliminated

In short, the item veto should go a long way toward establishing a fair and rational method for determining appropriations, and it could serve to expedite the entire process as well. All of this says nothing of the great potential value of the item veto as a means of doing away with riders, those pieces of substantive legislation having nothing whatsoever to do with appropriations, but attached, nevertheless, to appropriations bills because only in this way can they be passed. Most riders are usually too weak to stand alone, but under the present arrangement the President must either approve them or wipe out the whole appropriation.

Many of our Presidents have deplored their lack of authority to veto separate items.

Buchanan did so in his first annual message to Congress. Grant asked for a Constitutional Amendment to effect the change. Hayes chafed under the weight of undesirable riders he had to take with the appropriations. Arthur and Taft both urged the adoption of the item veto, as did Franklin D. Roosevelt.

In the second volume of his *Memoirs*, former President Truman wrote: "One important lack in the presidential veto power . . . is the authority to veto individual items in appropriation bills." In one letter to the Speaker of the House, President Eisenhower urged that Congress " . . . help assure continuing economy. . . take action that will grant the President the power now held by many state Governors to veto specific items in appropriation bills." He has repeatedly voiced his backing for this proposal in messages to Congress.

If the item veto is to be given to the President, how should it be done? This action could take any of two forms which are now before Congress. They are the Executive order method and the amending of the Constitution.

The Executive order plan would grant to the President by statutory law what is, in

effect, the item veto. The phrasing of the bill before the present Congress (s. 2373), of which I am co-sponsor, very well explains its purpose: "That the President is authorized to eliminate or reduce by Executive order, in whole or in part, any appropriation or appropriations made by an Act or Joint resolution. . ." Under this measure the public interest becomes the primary criterion by which the President would be guided. His decision would stand unless either House of Congress passed a resolution within 60 days stating that it does not favor this action.

This method is similar to that which controls Presidential reorganizations of the Executive Branch agencies. As applied to appropriation vetoes, it has a precedent in an amendment offered to a money bill by Representative Woodrum in 1938. At that time a careful legal memorandum was written justifying the constitutionality of this approach.

If given no other choice, I should be happy to support the Executive order method because I am convinced that any form of the item veto would be of great value. My preference, however, is for an Amendment to the Constitution to achieve this objective. Senate

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Joint Resolution 44, which I introduced in February, 1959, and which is similar to measures I sponsored for years as a member of the House of Representatives, calls for the adoption of such an Amendment. The proposal is straightforward and clear. Although the issue is of great importance, it can be expressed in unmistakable language, and that is what I have tried to do.

Amendment

The heart of my Amendment reads simply:

"The President shall have the power to disapprove any item or items of any general appropriation bill which shall have passed the House of Representatives and the Senate and have been presented to him for his approval, in the same manner and subject to the same limitations as he may, under section 7 of Article I of this Constitution, disapprove as a whole any bill which shall have been presented to him."

Granting the item veto by Constitutional Amendment rather than by some other method would, in my judgment, have distinct advantages. Perhaps the most important of these is that there would be absolutely no question about its legality. Despite strong legal arguments that can be mustered in support of other methods, such as by amending the statutes, a shadow of doubt would still lie over them in the minds of some people. There would always be the possibility of their being challenged as being in conflict with the veto provisions of the Constitution. I find myself in agreement with the words of Professor Edward Corwin, that eminent authority on the Constitution, who wrote in his *The President: Office and Powers*: "I find persuasive. . . the argument that this reform [item veto] would require a constitutional amendment."

Argument

Another argument in favor of the amendment method is that, once adopted, it could be revoked only by going through the amendment process again. This would protect the President from any hasty, capricious, or ill-considered action by Congress that might

arise as a result of a conflict or misunderstanding.

It can be argued, of course, that an Amendment would make it far more difficult to correct a mistake. This is true. But the evidence, including the experiences of the States, is overwhelming that the item veto, far from being a mistake, would be a most valuable addition to the procedures and techniques of good government.

I believe firmly that the Constitution should not be amended except for the most pressing and compelling reasons. It should not be amended if a desirable objective of fundamental importance can be attained by other legal means. Amending the Constitution is a very serious business which should be undertaken only after the most profound thought and after every alternative approach to a problem has of necessity been rejected for good and substantial reasons.

Opinion

In my opinion, on the basis of these standards, giving the President the power to veto separate items in appropriation bills is of sufficient importance to justify this change in our fundamental law. Achieving this goal will not be easy, but no goal of any value was ever attained without toil and travail.

This is a task which I believe should command the energies and efforts of all knowledgeable citizens who are concerned about the efficient and equitable operation of our Government. It is a cause to which members of the Bar and potential members of the Bar can uniquely add their talents.

In the end, I am confident that the great preponderance of evidence in its favor, combined with the growing sophistication of the electorate and its representatives, will result in placing the item veto in our arsenal of constitutional powers. Vigorously and wisely applied by our Chief Executives, the result can be the saving of literally millions of dollars, wiser use of taxpayers' funds, and a more perfect functioning of the greatest system of government the mind of man has ever devised.

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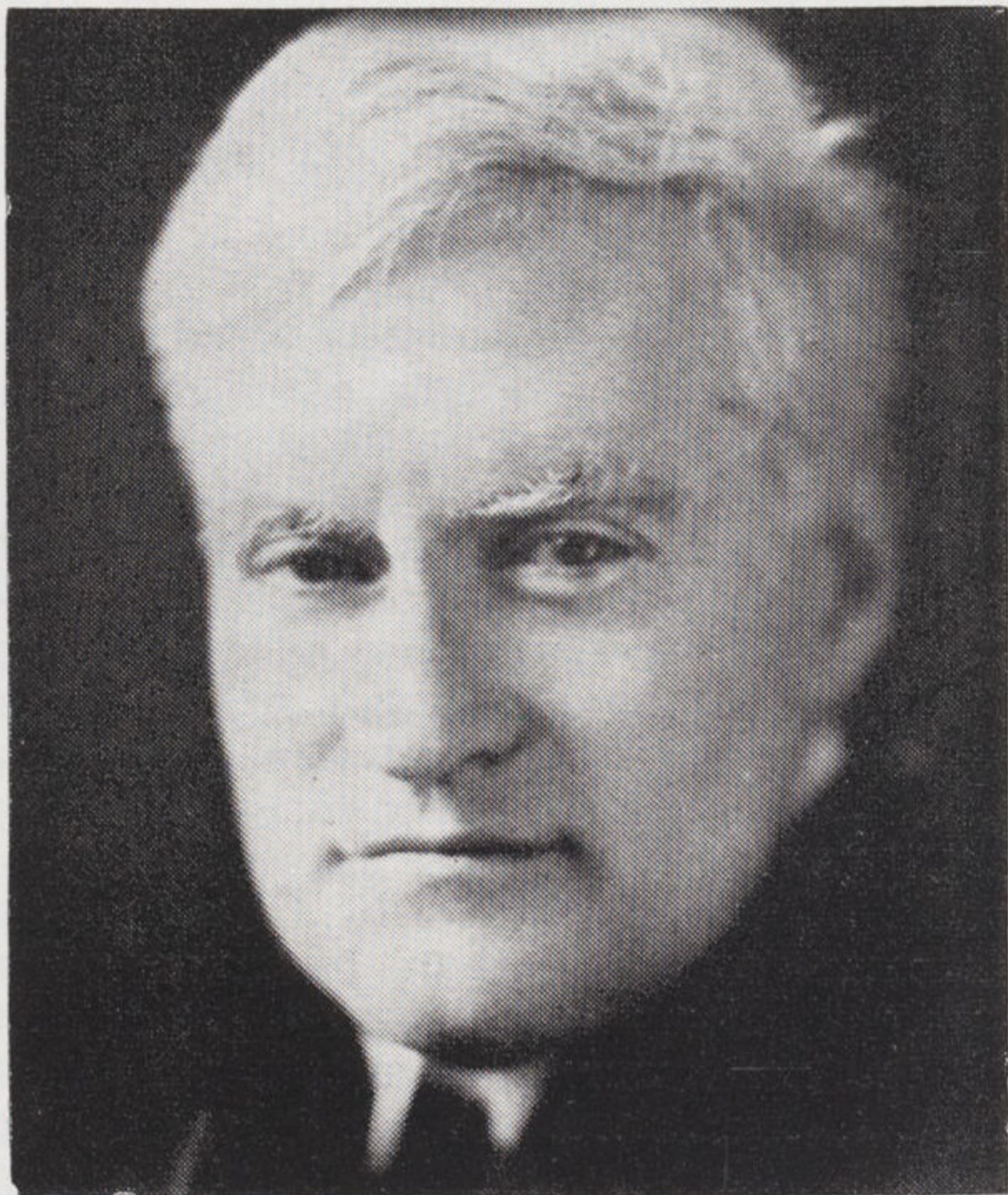
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Life of Benjamin N. Cardozo

The background and career of the outstanding lawyer and jurist, Benjamin Nathan Cardozo, are on exhibit in the Treasure Room of Langdell Library during February. Passages and illustrations from various books and magazines trace his life from his childhood through his eventual rise to the United States Supreme Court.



Mr. Justice Cardozo

The Treasure Room in Langdell Library is presenting a display during the month of February of books and manuscripts representative of the important events in the life of Mr. Justice Benjamin Nathan Cardozo. The exhibit was prepared by Miss Edith Guild Henderson, A.M., LL.B. '53, Librarian-in-Charge of the Harvard Law School Library Treasure Room, and Lawrence K. Wroth, 3L of Providence, Rhode Island. It reflects Cardozo's background, schooling at Columbia University and Law School, his years of practice, and his service on the bench of the New York Court of Appeals and the Supreme Court of the United States.

Cardozo was born on May 24, 1870, the son of Albert and Rebecca Nathan Cardozo, whose ancestors were members of a small group of Spanish and Portuguese Jewish families long prominent in the history of New York. At the time of Cardozo's birth, his father and

uncle were both outstanding citizens in New York City. His uncle, a man of great wealth, was president of the Spanish-Portuguese synagogue, vice-president of the stock exchange, and a colonel on the governor's staff. His father was a justice on the New York Supreme Court and vice-president of the synagogue.

Public scandal came early to the prominent family. Cardozo's uncle, Benjamin Nathan, died a violent death at the hands of a murderer who was never discovered, though the murder trial of a suspect was front page news. The Treasure Room exhibit includes a copy of *Leslie's Illustrated Newspaper*, for August 20, 1870, which presents sketches of the court room scene and drawings of the murder weapon.

Disgrace in Family

The disgrace of Judge Albert Cardozo, however, was worse for

young Benjamin, and is called a source of Cardozo's intense application to the law. An intention to restore some of the family reputation lost in the 1870's may explain the Justice's devotion to his profession, and his fabled humility may result from the unfortunate publicity which surrounded his family during his youth.

The senior Cardozo had come to the bench with the aid of Boss Tweed's political machine and that organization was enlisted to aid Jay Gould and James Fisk, Jr., whose manipulations had brought on the crash of the gold market on Black Friday, September 24, 1869. Interference by several judges, Albert Cardozo among them, through injunctions to halt actions brought by innocent parties to recover from Gould and the others, led the Bar of the City of New York to prefer charges resulting in Cardozo's resignation and return to private practice.

In contrast to this unfortunate history, the library display includes a sample of Benjamin Cardozo's early literary endeavor. A poem written during his youth ends with the prophetic words, "[Y]ou shall hear more from Master Ben." It is noted, too, that in preparation for entering Columbia, young Cardozo was tutored by Horatio Alger, Jr., though the student seems to have been less than satisfied with that teacher.

The promise suggested by his notable college and law school career is well chronicled in the Treasure Room exhibit. School publications set forth his remarkable record of multiple honors each year, and we are informed that Cardozo graduated first in his class with one of the highest records in the history of the school, while performing admirably in debating activities, being elected a vice-president of his class and, finally, delivering a commencement address on "The Altruist in Politics."

At Columbia Law School

Cardozo entered the Columbia Law School in 1889, just after the three year course of instruction had been instituted and before the introduction of the case method from Harvard Law School. Theodore W. Dwight, the school's founder, dominated the studies he had introduced 30 years earlier, which consisted of lectures and prepared recitations. A contemporary schedule shows that exams were administered more than once a year and that participation in moot court work was frequent. Students served as apprentices in downtown law firms, and classes were held in the afternoon. Lectures were published regularly in the *Columbia Law Times*.

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Dissatisfied with the new requirement of three years of study in preparation for the degree, Cardozo left at the end of two years. While studying law, however, he appears to have taken part in the apprentice system and at the same time he fulfilled the requirements for Master of Arts.

Seth Low, the President of Columbia University, hired Professor Keener from the Harvard Law School at this time, and with the retirement of Theodore Dwight, in 1890, Keener was appointed Dean of the Law School. The recent editor of a casebook in quasi-contracts, Keener soon introduced a modified case method to Columbia, but Cardozo's later success indicates that a lawyer could be well trained under the "Dwight" method, as well as under the Harvard method.

Practice in the Law

Leaving law school at the end of his second year, Cardozo was soon admitted to the bar in New York, on June 26, 1891, and he entered his brother's firm of Donohue, Newcombe, and Cardozo. He tried cases in the trial court, but proved to have particular ability at the appellate level, winning his first case there five months after joining the bar. The Treasure Room exhibit includes the report of a case which

Cardozo won in which counsel on the other brief included his later colleagues on the Supreme Court of the United States, Charles Evans Hughes and Harlan Fiske Stone.

Also displayed is a copy of a treatise written by Cardozo, while he was practicing, on *The Jurisdiction of the Court of Appeals of the State of New York*. This was highly recommended and widely read by other members of the bar at that time. Before he came to the bench in 1914, Cardozo spent 23 years at the bar, and during that time he argued 197 cases and won 133.

Cardozo's election to the New York court came as the result of an anti-Tammany campaign which was precipitated by revelations of corruption in the police department, a subject which has a familiar sound in 1960. Supported by all except the Hearst papers, he was elected by a narrow margin. Cardozo's characteristic humility was exemplified in

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his observation that had it not been for the Italian vote of those who thought that his name, because it ended with an "o," was Italian, he would not have won.

Cardozo took his seat on the New York Supreme Court on January 1, 1914, but a month later he was designated by the Governor to sit on the Court of Appeals in an effort to relieve the congestion before that court. In 1917, he became a permanent member of the Court of Appeals, and in 1926 he succeeded Chief Judge Hiscock as the head of that Court, a position that he held until called to the United States Supreme Court in 1932 to take the place of Mr. Justice Holmes.

Career on the Courts

Judge Cardozo's career on the New York Court of Appeals is well illustrated in the display. Presented along with copies of the official reports of his most famous cases are manuscript opinions, reworded and reworked in the handwriting of that great judge. The interested visitor will also find a contemporary publication with an advertisement for the Buick of the day, with wooden wheels, which gained such notoriety in Cardozo's opinion in *MacPherson v. Buick Motor Co.*, 217 N. Y. 382, 111 N. E. 1050 (1916).

The exhibit notes the importance of Judge Cardozo on the development of the Restatement of Torts by comparing the opinion in *Palsgraf v. Long Island R. R. Co.*, 248 N. Y. 339, 162 N. E. 99 (1928), with section 269 of the *Restatement*. A further item of interest during Cardozo's period of service on the New York Court is a letter from Governor Franklin Delano Roosevelt regarding publication of the opinions of the court.

That his elevation to the United States Supreme Court was a criti-

cal move in his life is reflected in Cardozo's correspondence at the time. He felt that he could contribute more to the law on the New York court, where his particular competence in the common law could be used to advantage. Noted also is the nationwide agreement that Cardozo was the man to fill the place left by Mr. Justice Holmes. As New York was already represented on the Supreme Court by two men, the West had a prior claim, but representatives of the bar in that part of the country also wanted Cardozo. Cardozo was reluctant to accept and is said to have been preparing to decline when President Hoover telephoned in a surprise move and Cardozo accepted.

Cardozo's fear that he might not be as well able to carry on the responsibilities of the Supreme Court were certainly contradicted by his record on that court, which is more illustrious than one would expect from a man whose first opinion was delivered in the October term, 1931, and who died a scant seven years later.

The Treasure Room exhibit shows some of the influences of the times on Mr. Justice Benjamin Nathan Cardozo as he grew with his profession and illustrates the exceptional impact upon the law of his country which is the legacy left by this great yet humble judge. He was the son of one of our sister schools, but a man of whom the Harvard Law School and the rest of the legal profession can be proud.

— Winslow

Calendar

Continued from page 2

Current Events

Students interested in membership in the **PATENT LAW CLUB** are invited to look for announcements of meetings and to participate in the development of a speaker and activities program. A report of the first meeting of this club and its speaker, Mr. Elmer Gorn, patent counsel for Raytheon, Inc., is included in the News Section of this week's **RECORD**.

Plays currently in Boston include:

"Look Homeward, Angel" at the Colonial; "The Tumbler" with Charlton Heston, directed by Sir Laurence Olivier, at the Shubert; and "Toys in the Attic" by Lillian Hellman, with Jason Robards Jr. and Maureen Stapleton, at the Wilbur.

Various firms are now interviewing second year students for summer jobs. Interested students should watch for the notices and inquire at the **STUDENT PLACEMENT OFFICE** for further information.

Future Events

The annual **OLIVER WENDALL HOLMES LECTURE** will be given by Ivan C. Rand, former Justice of the Supreme Court of Canada and now Dean of the Faculty of Law of Western Ontario. His topic will be "Some Aspects of Canadian Constitutionalism." The lecture will be held on Friday, February 26, at 8 p. m. in the James Barr Ames Courtroom, Austin Hall. It will be open to the public.

The next general meeting of the **INTERNATIONAL LAW CLUB** will be Friday, March 4, in the Pound Room in Langdell. The speaker will be Dr. Saba Habashy, Legal Advisor to the Arabian-American Oil Co. Dr. Habashy's subject will be "The Importance of Arbitration as a Means for the Settlement of International Disputes."

Weekend

Entertainment

BRATTLE—Ivan The Terrible - 3:30, 5:30, 7:30, 9:30.

UNIVERSITY—Happy Anniversary - 3:20, 6:35, 9:50; Subway in The Sky - 5:00, 8:15.

BOSTON

TELEPIX—Grand Illusion - 11:30, 1:21, 3:25, 5:18, 7:23, 9:28.

EXETER—The Mouse That Roared 2:25, 4:10, 6:00, 7:45, 9:35.

UPTOWN—The Miracle - 1:10, 5:20, 9:25; Horse's Mouth - 11:25, 3:35, 7:40.

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